this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 112(l) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone, Sulfur oxides.

Dated: June 23, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(130) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(130) Revisions to minor source operating permit rules for Nashville-Davidson County submitted by the Tennessee Department of Environment and Conservation on November 16, 1994.

(i) Incorporation by reference.

(A) Metropolitan Code of Law (M.C.L.) Chapter 10.56, Section 040, Paragraph F, effective October 4, 1994.

(ii) Other material. None.

[FR Doc. 95–18518 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NC–065–1–6431a; FRL–5226–7]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the Mecklenburg County Portion of the North Carolina State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Mecklenburg County portion of the North Carolina State Implementation Plan (SIP) to allow the Mecklenburg County Department of Environment to issue Federally enforceable local operating permits (FELOP). On November 24, 1993, the Mecklenburg County Department of Environment through the North Carolina Department of Environment, Health, and Natural Resources (DEHNR) submitted a SIP revision fulfilling the requirements necessary to issue FELOP. The submittal conforms with the requirements necessary for a local agency's minor source operating permit program to become federally enforceable. In order to extend the Federal enforceability of local operating permits to hazardous air pollutants (HAP), EPA is also proposing approval of the Mecklenburg County minor source operating permit regulations pursuant to section 112 of the Act.

DATES: This final rule will be effective on September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Scott Miller at the EPA Regional office listed below.

Copies of the material submitted by Mecklenburg County may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

North Carolina Department of Health, Environment and Natural Resources, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental

Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–2864.

SUPPLEMENTARY INFORMATION: On November 24, 1993, Mecklenburg County, North Carolina through DEHNR submitted a SIP revision designed to allow Mecklenburg County to issue FELOP which conform to EPA requirements for federal enforceability as specified in a **Federal Register** notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA and citizens under the Act to enforce terms and conditions of local-issued minor source operating permits. Operating permits that are issued under the County's minor source operating permit program that is approved into the State SIP and under section 112(l) will provide federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through federally enforceable operating permits can affect a source's applicability to federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a local agency's minor source operating permit program federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for federal enforceability of the County's minor source operating permit program.

The first criteria for a local agency's minor source operating permit to become federally enforceable is that the regulations governing permit issuance are approved into the SIP. On November 24, 1993, Mecklenburg County through the DEHNR submitted a SIP revision fulfilling the requirements necessary to make Mecklenburg County's minor source operating permit program federally enforceable. This action will approve these regulations into the North Carolina SIP, thereby, meeting the first criteria for federal enforceability.

The second criteria for a state's operating permit program to become federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Mecklenburg County Air Pollution Control Ordinance (MCAPCO) Regulation 1.5232(b) states that failure to apply for or to act in accordance with the terms, conditions, or requirements of any permit shall be cause for enforcement sanctions in MCAPCO Regulation 1.5300 and Chapter 143, Article 21B of the General Statutes of North Carolina. MCAPCO Regulation 1.5300 lists criminal and civil enforcement remedies that the County may take in the event that an air pollution source violates the terms, conditions, or requirements of the permit. Hence, the second criteria for federal enforceability is met.

The third criteria necessary for Mecklenburg County's operating permit program to be federally enforceable is that the local operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''federally enforceable'' (e.g. standards established under sections 111 and 112 of the Act). MCAPCO Regulation 1.5232(b) mandates that approval of construction, modification, or operation of any source shall not affect the responsibility of the owner or operator to comply with applicable portions of the SIP. Therefore, the third criteria for federal enforceability is met.

The fourth criteria for a local agency's operating permit program to become federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, the County has included several regulations designed to ensure that permit limitations are enforceable as a practical matter. MCAPCO Regulation 1.5212(d) requires that upon request an air pollution source prove to the Department that it has complied with air quality emission standards and has been in compliance with federal and state laws and regulations. MCAPCO Regulation 1.5213(b) provides that the Department will attach as a condition of any permit which is issued, a requirement that the applicant prior to construction or operation of a facility under the permit, comply with all lawfully adopted ordinances. MCAPCO Regulation 1.5214 requires that after a permit is issued a source must submit written notification to the Department before it commences operation of the newly permitted activity. Within 90 days after the source notifies the Department, the Department will inspect the source, equipment, process, or device in order to determine compliance with permit conditions and limitations. Therefore, the fourth criteria for federal enforceability is met.

The fifth criteria for a local agency's operating permit program to become federally enforceable is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. MCAPCO Regulation 1.5213(g) requires a 30 day public notice period for every permit issued by the County. In addition, every permit issued by the County goes through a public hearing prior to permit issuance. MCAPCO Regulation 1.5213(h) requires the Department to submit the proposed permit to EPA for review during the 30 day comment period, and also provides that after final permit issuance the Department will submit a copy of the final permit to EPA. Hence, the fifth criteria for federal enforceability is met.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits (FESOP). Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered federally enforceable. The EPA has encouraged states to develop such FESOP programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, ''Limitation of Potential to Emit with Respect to Title V Applicability Thresholds,'' dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, ''Approaches to Creating Federally Enforceable Emissions Limits,'' signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act.

In addition to requesting approval into the SIP, Mecklenburg County also requested on July 12, 1994, approval of its minor source operating permit program under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[1]

However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FELOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAP because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants. Hence, the following five criteria are applicable to FELOP approvals under section 112(l): (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989, criteria or the EPA's underlying regulations shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits that are intended to be federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis.

In addition to meeting the criteria in the June 28, 1989, document, a FELOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FELOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FELOP programs, will mirror those set forth in the June 28, 1989, notice. EPA also anticipates that given FELOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This could be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving Mecklenburg County's minor source operating permit program to allow the County to begin issuing FELOPs as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Mecklenburg County's minor source operating permit program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Mecklenburg County has demonstrated that it can provide for adequate resources to support the minor source operating permit program. EPA expects that since Mecklenburg County has administered a minor source operating permit program for several years, resources will continue to be adequate to administer the minor source operating permit program. EPA will monitor Mecklenburg County's implementation of its FELOP to ensure that adequate resources are in fact available. EPA also believes that Mecklenburg County's minor source operating permit program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Mecklenburg County's program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit.

With the addition of these provisions, Mecklenburg County's minor source operating permit program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. Therefore, EPA is approving this revision to the Mecklenburg County portion of the North Carolina SIP making the County's minor source operating permit program federally enforceable which will allow the County to issue FELOP.

Final Action

In this action, EPA is approving the Mecklenburg County minor source operating permit program. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

filed. This action will be effective on September 26, 1995 in the **Federal Register** unless, by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 26, 1995.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Action

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 23, 1995.

William A. Waldrop,

Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(70) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(70) The minor source operating permit program for Mecklenburg County, North Carolina, submitted by the Mecklenburg County Department of Environmental Protection on November 24, 1993, and as part of the Mecklenburg County portion of the North Carolina SIP.

(i) Incorporation by reference.

MCAPCO Regulations 1.5211 through 1.5214, 1.5216, 1.5219, 1.5221, 1.5222, 1.5232, 1.5234, and 1.5306 of the Mecklenburg County portion of the North Carolina SIP adopted June 6, 1994.

(ii) Other material. None.

* * * * *

[FR Doc. 95–18527 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN22–4–6825; FRL–5265–2]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 2, 1994, the United States Environmental Protection Agency (USEPA) proposed to approve a November 17, 1993, request for a State Implementation Plan (SIP) revision, addressing the Lake and Porter County ozone nonattainment area, submitted by the State of Indiana for the purpose of offsetting growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission